

## SENATE BILL NO. 74

INTRODUCED BY STORY

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT CERTAIN LAND THAT IS NOT ELIGIBLE FOR VALUATION, ASSESSMENT, AND TAXATION AS AGRICULTURAL LAND IS CONSIDERED TO BE NONQUALIFIED AGRICULTURAL LAND; PROVIDING THAT LAND WITH COVENANTS OR OTHER RESTRICTIONS THAT PROHIBIT AGRICULTURAL USE MAY NOT BE CLASSIFIED OR VALUED AS NONQUALIFIED AGRICULTURAL LAND; AMENDING SECTIONS 15-6-133, 15-7-202, AND 15-10-420, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 15-6-133, MCA, is amended to read:

**"15-6-133. Class three property -- description -- taxable percentage.** (1) Class three property includes:

(a) agricultural land as defined in 15-7-202;

(b) nonproductive patented mining claims outside the limits of an incorporated city or town held by an owner for the ultimate purpose of developing the mineral interests on the property. For the purposes of this subsection (1)(b), the following provisions apply:

(i) The claim may not include any property that is used for residential purposes, recreational purposes as described in 70-16-301, or commercial purposes as defined in 15-1-101 or any property the surface of which is being used for other than mining purposes or has a separate and independent value for other purposes.

(ii) Improvements to the property that would not disqualify the parcel are taxed as otherwise provided in this title, including that portion of the land upon which the improvements are located and that is reasonably required for the use of the improvements.

(iii) Nonproductive patented mining claim property must be valued as if the land were devoted to agricultural grazing use.

(c) parcels of land of 20 acres or more but less than 160 acres under one ownership that are not eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(1), which are considered to be

1 nonqualified agricultural land. The Nonqualified agricultural land may not be devoted to a commercial or  
2 industrial purpose. Nonqualified agricultural land is valued at the productive capacity value of grazing land, at  
3 the average grade of grazing land.

4 (2) ~~Class~~ Subject to subsection (3), class three property is taxed at the taxable percentage rate  
5 applicable to class four property, as provided in 15-6-134(2)(a).

6 (3) The taxable value of land described in subsection (1)(c) is ~~valued at the productive capacity value~~  
7 ~~of grazing land, at the average grade of grazing land, and the taxable value is~~ computed by multiplying the value  
8 ~~of the land~~ by seven times the taxable percentage rate for agricultural land."

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10 **Section 2.** Section 15-7-202, MCA, is amended to read:

11 **"15-7-202. Eligibility of land for valuation as agricultural.** (1) (a) Contiguous parcels of land totaling  
12 160 acres or more under one ownership are eligible for valuation, assessment, and taxation as agricultural land  
13 each year that none of the parcels is devoted to a residential, commercial, or industrial use.

14 (b) (i) Contiguous parcels of land of 20 acres or more but less than 160 acres under one ownership are  
15 eligible for valuation, assessment, and taxation as agricultural land if the land is used primarily for raising and  
16 marketing, as defined in subsection (1)(c), products that meet the definition of agricultural in 15-1-101. A parcel  
17 of land is presumed to be used primarily for raising agricultural products if the owner or the owner's immediate  
18 family members, agent, employee, or lessee markets not less than \$1,500 in annual gross income from the  
19 raising of agricultural products produced by the land. The owner of land that is not presumed to be agricultural  
20 land shall verify to the department that the land is used primarily for raising and marketing agricultural products.

21 (ii) Noncontiguous parcels of land that meet the income requirement of subsection (1)(b)(i) are eligible  
22 for valuation, assessment, and taxation as agricultural land under subsection (1)(b)(i) if:

23 (A) the land is an integral part of a bona fide agricultural operation undertaken by the persons set forth  
24 in subsection (1)(b)(i) as defined in this section; and

25 (B) the land is not devoted to a residential, commercial, or industrial use.

26 (c) For the purposes of this subsection (1):

27 (i) "marketing" means the selling of agricultural products produced by the land and includes but is not  
28 limited to:

29 (A) rental or lease of the land as long as the land is actively used for grazing livestock or for other  
30 agricultural purposes; and

(B) rental payments made under the federal conservation reserve program or a successor to that program;

(ii) land that is devoted to residential use or that is used for agricultural buildings and is included in or is contiguous to land under the same ownership that is classified as agricultural land, other than nonqualified agricultural land described in 15-6-133(1)(c), must be classified as agricultural land, and the land must be valued as provided in 15-7-206.

(2) Contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use are eligible for valuation, assessment, and taxation as agricultural each year that the parcels meet any of the following qualifications:

(a) the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than \$1,500 in annual gross income from the raising of agricultural products as defined in 15-1-101; or

(b) the parcels would have met the qualification set out in subsection (2)(a) were it not for independent, intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

(3) Parcels that do not meet the qualifications set out in subsections (1) and (2) may not be classified or valued as agricultural if they are part of a platted subdivision that is filed with the county clerk and recorder in compliance with the Montana Subdivision and Platting Act.

(4) Land may not be classified or valued as agricultural land or nonqualified agricultural land if it ~~is subdivided land with or if it has stated covenants or other restrictions that effectively prohibiting prohibit in whole or in part~~ its use for agricultural purposes. ~~For the purposes of this subsection only, "subdivided land" includes parcels of land larger than 20 acres that have been subdivided for commercial or residential purposes.~~

(5) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise is not considered a bona fide agricultural operation.

(6) The department may not classify land less than 160 acres as agricultural unless the owner has applied to have land classified as agricultural land. Land of 20 acres or more but less than 160 acres for which no application for agricultural classification has been made is valued as provided in 15-6-133(1)(c) and is taxed as provided in 15-6-133(1)(c)(3). If land has been valued, assessed, and taxed as agricultural land in any year, it must continue to be valued, assessed, and taxed as agricultural until the department reclassifies the property. A reclassification does not mean revaluation pursuant to 15-7-111.

(7) For the purposes of this part, growing timber is not an agricultural use."

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2       **Section 3.** Section 15-10-420, MCA, is amended to read:

3       **"15-10-420. Procedure for calculating levy.** (1) (a) Subject to the provisions of this section, a  
4 governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount  
5 of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3  
6 years. The maximum number of mills that a governmental entity may impose is established by calculating the  
7 number of mills required to generate the amount of property tax actually assessed in the governmental unit in  
8 the prior year based on the current year taxable value, less the current year's value of newly taxable property,  
9 plus one-half of the average rate of inflation for the prior 3 years.

10       (b) A governmental entity that does not impose the maximum number of mills authorized under  
11 subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between  
12 the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill  
13 authority carried forward may be imposed in a subsequent tax year.

14       (c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate  
15 of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using  
16 the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

17       (2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional  
18 levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including  
19 newly taxable property.

20       (3) For purposes of this section, newly taxable property includes:

21       (a) annexation of real property and improvements into a taxing unit;

22       (b) construction, expansion, or remodeling of improvements;

23       (c) transfer of property into a taxing unit;

24       (d) subdivision of real property; and

25       (e) transfer of property from tax-exempt to taxable status.

26       (4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the  
27 release of taxable value from the incremental taxable value of a tax increment financing district because of:

28       (i) a change in the boundary of a tax increment financing district;

29       (ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

30       (iii) the termination of a tax increment financing district.

(b) For the purpose of subsection (3)(d), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property or as ~~nonagricultural~~ nonqualified agricultural land as described in 15-6-133(1)(c).

(c) For the purposes of this section, newly taxable property does not include an increase in appraised value of land that was previously valued at 75% of the value of improvements on the land, as provided in 15-7-111(4) and (5), as those subsections applied on December 31, 2001.

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

(a) school district levies established in Title 20; or

(b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in whole mills. If the mill levy calculation does not result in a whole number of mills, then the calculation must be rounded up to the nearest whole mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402; or

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

(11) The department may adopt rules to implement this section. The rules may include a method for

calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

**COORDINATION SECTION. Section 4. Coordination instruction.** If House Bill No. 72 [LC 370] is passed and approved, then [section 1 of this act] and [section 1] of House Bill No. 72 [LC 370], amending 15-6-133, are void and 15-6-133 must be amended as follows:

**"15-6-133. Class three property -- description -- taxable percentage.** (1) Class three property includes:

(a) agricultural land as defined in 15-7-202;

(b) nonproductive patented mining claims outside the limits of an incorporated city or town held by an owner for the ultimate purpose of developing the mineral interests on the property. For the purposes of this subsection (1)(b), the following provisions apply:

(i) The claim may not include any property that is used for residential purposes, recreational purposes as described in 70-16-301, or commercial purposes as defined in 15-1-101 or any property the surface of which is being used for other than mining purposes or has a separate and independent value for other purposes.

(ii) Improvements to the property that would not disqualify the parcel are taxed as otherwise provided in this title, including that portion of the land upon which the improvements are located and that is reasonably required for the use of the improvements.

(iii) Nonproductive patented mining claim property must be valued as if the land were devoted to agricultural grazing use.

(c) parcels of land of 20 acres or more but less than 160 acres under one ownership that are not eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(1), which are considered to be nonqualified agricultural land. The Nonqualified agricultural land may not be devoted to a commercial or industrial purpose. For the tax year beginning January 1, 2006, through the tax year ending December 31, 2008, nonqualified agricultural land is valued at the productive capacity value of grazing land, at the average grade of grazing land. For tax years beginning after December 31, 2008, nonqualified agricultural land is valued at the statewide average productive capacity value of grazing land.

(2) ~~Class~~ Subject to subsection (3), class three property is taxed at the taxable percentage rate applicable to class four property, as provided in 15-6-134(2)(a).

(3) The taxable value of land described in subsection (1)(c) is ~~valued at the productive capacity value~~

1 ~~of grazing land, at the average grade of grazing land, and the taxable value is~~ computed by multiplying the value  
2 ~~of the land~~ by seven times the taxable percentage rate for agricultural land."

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4 NEW SECTION. **Section 5. Applicability.** [This act] applies to property tax years beginning after  
5 December 31, 2005.

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